

To: Higher Education Coordinating Commission
From: Oregon Statewide Provosts Council
Re: Comment, *Notice of Proposed Rulemaking Hearing, Chapters 589 and 715, Related to the Establishment, Alignment and Maintenance of Major Transfer Maps*
Date: 21 July 2023

The Statewide Provosts Council (SPC) submits the following comment in response to the Higher Education Coordinating Commission's (HECC) *Notice of Proposed Rulemaking Hearing, Chapters 589 and 715, Related to the Establishment, Alignment and Maintenance of Major Transfer Maps*.

The SPC appreciates the HECC staff's work on the OARs. As the chief academic officers of Oregon's public universities, the SPC proposes several changes to the OARs that it believes will result in faster development of more uniform transfer pathways, better outcomes for students, stronger service of workforce needs, and the soundness and integrity of higher education curricula in Oregon over the long run. Accompanying this note is a document with specific suggested changes in the OARs.

The SPC's recommended changes seek to recognize and navigate a key trade-off between achieving uniform pathways and the value of meaningful specialization across universities in service of student and workforce needs. On the one hand, it is important from a student success standpoint that there be legible and efficient routes to bachelor's degrees for students who begin their higher education journeys at Oregon's community colleges. Community colleges, in turn, need simplified, well-articulated curricular pathways to work with, as they have limited resources and systems for managing different pathways within the same major across the seven universities. These priorities call for maximum similarity in degree paths across institutions.

On the other hand, Oregon is fortunate to have seven public universities that do not all share the same mission. Those different missions serve Oregon in valuable ways cost efficiently and with circumscribed duplication. Across two very research intensive (R1) universities, an urban serving public research (R2) university, and four technical and regional universities, faculty capacities and specializations vary accordingly, often within the degree programs that share the same name. This gives Oregon students good options depending on their life and career goals. Oregon's citizens and elected officials have never envisioned seven universities identical in mission. These university mission foci and the priority of providing students with a diversity of options call for meaningful difference in selected degree paths across institutions.

The challenge is how to balance these different priorities, namely the tension between the simplicity and legibility of uniform degree paths and the benefit of specialization within degrees that is of real value to students and employers. The SPC is confident that a sound balance for Oregon can be achieved with the changes we recommend. The changes fall into two major buckets:

1. First, the OARs should use language that is clearer about what the MTM effort is striving to accomplish. The goal is not to create "alignment." Rather, what an MTM is striving to do is to create what are essentially identical or near-identical pathways for selected majors for students on a journey through community colleges and on to universities. That is, the aim is that every student in the given major follows, if not the same path, something very close to the same path.

This aim has specific benefits, as noted above. It also has limits, also as noted above.

Departures from "identical" are not "misalignment." Rather, they are "differences," and sometimes those differences will be meaningful and generate real value for student academic

and career goals and state workforce needs. When not meaningful and valuable, the differences should be eliminated.

2. Second, the OARs should not depart from the critical principle that academic experts—ultimately the faculty in sound shared governance with university leaders and institutional governing boards—should create and validate academic curricula, not state government officials. There are several places in the OARs that compromise this principle in ways that simply are not necessary to achieve the goals outlined above.

In particular, the section in the OARs that calls for declaring an “impasse” and turning over college and university curricula development to HECC staff employees is deeply problematic for Oregon higher education and has parallels with some of what is being debated in states seeking to assert bureaucratic control over DEI education, critical race theory, issues of gender, and other topics. While proposed by the HECC staff for laudable reasons of timely completion of MTMs, it compromises the bedrock principle that the integrity of an academic degree rests on its origins in academic expertise.

And, there simply is no reason to do it to achieve our shared goals. The universities’ chief academic officers recommend in our suggested changes that when progress is not being achieved in a timely way on a given MTM, existing organizations that are a step in program approval *already*—namely the Statewide Provosts Council and the chief academic officers of community colleges—be tasked with developing the MTM. They will then work with their respective faculties according to their established governance norms.

STUDENT SUCCESS

The SPC is strongly supportive of the principles underpinning MTMs (also referred to as unified statewide transfer agreements) that appear in the lay OARs (LOARs) approved by the Transfer Council (TC) at its May 30, 2023 meeting. The Transfer Council’s LOARs carefully consider student success, shared leadership, the principle of academic expertise, and the stipulations in ORS 350.395-350.432, hereafter the “Transfer Statutes.” Yet, many important components of the LOARs are not incorporated or interpreted incorrectly in the HECC staff’s proposed OARs, and we fear this may harm students (e.g., by requiring students to take excess credits or by leaving them unprepared to make satisfactory academic progress).

CURRICULAR EXPERTISE

Academic curricula should be developed and maintained by faculty with expertise in relevant content area. Programs are created and managed by faculty—and overseen and approved by university leaders and institutional governing boards—in response to changing employer and societal demands and in response to new discoveries and methodologies in various fields. Living, evolving curricula support positive outcomes for graduating students in existing and emerging disciplines.

While *individual* faculty members have limited authority over curricula, institutions and their boards do have that authority, as granted to institutions in ORS 352.087(1)(q) and in ORS 352.146. This is important, because individual faculty members serving on subject area subcommittees of the Transfer Council *do not* represent the collective faculty within their institutions. The current draft of proposed rules moves curricular authority to HECC, which is inconsistent with the statutes referenced above.

ACADEMIC FREEDOM

In the context of increasingly intense national conversations about what content is appropriate in higher education, the public universities' provosts deeply appreciate the historical support in the state of Oregon for academic freedom. There is no reason to compromise this longstanding commitment. The proposed rules conflict with existing state law on where the authority for course curricula lies and with the federal constitutional right to academic freedom, including the rights of an institution to determine "what may be taught," and "how it shall be taught." These rights have been recognized for many years as two of the "four essential freedoms of a university" by the U.S. Supreme Court (see e.g., *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring)).

The Transfer Statutes related to SB 233 direct the HECC to "Adopt rules based on the work and recommendations of the council..." (ORS 350.429(2)(a)). The principles in the LOAR—developed collaboratively by the universities and community colleges and approved by the Transfer Council—are consistent with this language and with a shared leadership model preserving institutional academic freedom. Many of these vital principles were not incorporated by the HECC in its proposed OARs. The result are OARs that overstep HECC's authority under the statutes and longstanding principles of academic freedom.

DETAILS

1. **The HECC's proposed rules grant the Commission authority to determine which institutions must participate in each MTM (referred to as a "CAP"—curriculum articulation policy—in the proposed rules). There is no basis for such authority in the Transfer Statutes, and such authority conflicts with universities' rights under and in ORS 352.146.** The Transfer Statutes do not give the HECC authority to determine which institutions offer a particular major or to require an institution to participate in a developed MTM. OARs that do so would not only exceed the HECC's authority in the Transfer Statutes, but they would also conflict with institutions' right to determine courses of study and curricula (as driven by their faculty bodies and university boards).ⁱ
 - Per proposed OAR 715-025-0015, the HECC would have the authority to determine what programs institutions must offer, as it would give the HECC the authority to determine which institutions offer programs subject to the requirements of a particular MTM. The universities, however, must determine which programs they will seek to offer. Nothing in the statutes authorizes the HECC to force universities to offer particular programs.
 - While majors at the different universities may carry the same (or similar) names, they can have substantially different foci. Indeed, ORS 250.075 (3)(g)(B) requires this.
 - Per proposed OAR 715-025-0060, even though an institution could seek an exemption from participation in a MTM if the institution offers a program similar in title but where the areas of foci diverge significantly from other public institutions, the rule would grant the HECC final decision making authority on whether the exemption will be granted. This usurps the institutions' authority.
 - There is an additional problem regarding the exemption process in proposed OAR 715-025-0060. There is only one reason in the proposed rules that an exemption may be granted. Exemptions must also be considered for institutions where participation (or continued participation) would cause a significant financial hardship or other strain on the institution's

resources, most commonly because it lacks the personnel with the requisite expertise to deliver the full scope of instruction specified in the MTM.

- Per proposed OAR 715-025-0055(6), the HECC would require an institution to seek from the HECC an exemption to an existing MTM before it could modify a course or element of the curriculum that would have the effect of causing the institution to be out of compliance with the MTM agreement. This conflicts with Oregon statutes.
2. **The HECC may only act in ways that are *expressly* granted by the legislature. “Except as otherwise expressly provided by law, all other authorities reside at the institutional level with the respective boards of the post-secondary institutions” (ORS 350.075(8)).** The HECC “may not exercise any authority, express or implied, statutorily provided to a governing board of a public university”.
 3. **The HECC plainly exceeds the authority granted to it by the Transfer Statutes by giving itself the flexibility to require more than the Transfer Statutes require of the institutions.** Proposed OAR 715-025-0010(2) would grant the HECC the authority to “designate a greater number of major courses for development in each calendar year” than is required to be approved and implemented under ORS 350.404(4). This exceeds the statutory authority of the HECC and is not permitted under ORS 350.075(8). The Transfer Statutes require that institutions, through the Transfer Council, establish MTM’s for three major courses of study per year and one MTM during the period the Transfer Council is working on common course numbering.
 4. **The HECC’s proposed rules grant the Commission authorities that are in fact given to institutions and the Transfer Council in the Transfer Statutes; namely the authority to develop and approve content of the MTM, and such authority conflicts with universities’ rights under ORS 352.146.** The Transfer Statutes grant authority and responsibility to the institutions, through the Transfer Council, to develop the MTM. The proposed rules conflict with the Transfer Statutes by granting that authority to the HECC. In addition to conflicting with the Transfer Statutes, the HECC’s oversight in this instance is unnecessary because the Transfer Statutes set forth in detail what must be included and considered in the MTM (ORS 350.404). Also, the proposed rules related to variances interfere with the academic freedom principle that universities’ courses of study and curricula be developed, approved, and maintained by their faculty, and with the institutions’ statutory responsibility to maintain the standards of intellectual and academic rigor when developing MTM. This situation would put HECC far outside of its statutory authority, which would violate ORS 350.075(8).
- By statute, the institutions, through the Transfer Council, have the authority and responsibility to develop MTMs.^{ii, iii}
 - By statute, the HECC has the responsibility to *facilitate* the development of MTMs, and to ensure the maintenance of the MTMs, but it has no right to exercise approval or veto authority over the *contents* of the MTM agreements. The HECC’s envisioned role as *facilitator* in statute was very important to the universities when the Transfer Statutes were passed, as the universities are committed to academic freedom and their authority to decide the courses and programs they offer.^{iv}
 - Per proposed OAR 715-025-0025 and 715-025-0035, the HECC would have final approval authority over all MTMs and could direct the Transfer Council to revise an MTM at the HECC’s discretion. This exceeds the authority granted to the HECC in the Transfer Statutes and is at

odds with the provisions of the Transfer Statutes that grant the right to develop the MTM to the institutions by means of the Transfer Council that is established in state law.^v

- Per proposed OAR 715-025-0030, the HECC would have the authority to develop a MTM on its own volition if the Transfer Council does not recommend an MTM for approval to the HECC within 12 months from the date designated as the start date for development, or if the Transfer Council does not make revisions to the CAP as directed by the HECC. This exceeds the authority granted to the HECC in the Transfer Statutes and is at odds with the provisions of the Transfer Statutes that grant the right to develop the CAPs to the institutions by means of the Transfer Council.^{vi}
- Per proposed OARs 715-025-0020(4), 715-025-0025 and 715-025-0035, an MTM may include variances when such variances benefit students but the HECC would have the final approval authority over any variances. This authority conflicts with the right of the faculty to determine an institution's course of study and curriculum^{vii} and it affects the institutions' ability to meet the requirement to "seek to maintain the standards of intellectual and academic rigor at community colleges and public universities" when designing the MTM.^{viii} In addition, the HECC's proposed rules ignore the concept of "meaningful variance" as endorsed by the Transfer Council in the LOARs it voted to approve.

- 5. The HECC has assumed undue authority over the rulemaking process itself.** In statute, it is the Transfer Council that "shall make recommendations to the commission on the adoption of rules necessary to: ...Ensure the coordination, establishment, alignment, effectiveness and maintenance of foundational curricula described in ORS 350.400 and unified statewide transfer agreements described in ORS 350.404..." (SB 233 Section 8 (1) (E)). The HECC is directed to "Adopt rules *based on* the work and recommendations of the council on matters described in subsection (1)(d)) of this section." ORS 350.429(2)(a) (emphasis added).

The proposed rules disregard many of the principles endorsed by the Transfer Council in the LOARs that the Transfer Council recommended to the HECC pursuant to these statutes. In addition, the process that the HECC staff have used in developing proposed rules does not comport to the statutes, as it does not appear that the HECC's proposed rules are "based on" the Transfer Council's work and recommendations. The HECC staff's proposed OARs make unilateral decisions—neither vetted by the Transfer Council nor appearing in the Transfer Statutes—and simply incorporated these in the proposed rules. As just one example a "CAP," or "Curriculum Articulation Policy," was never endorsed by the Transfer Policy as the document to formalize a MTM agreement, and yet it has been inserted as such in the proposed rules. This kind of unilateral action is not consistent with effective facilitation and coordination.

SUMMARY

Once again, the SPC appreciates the HECC staff's work on proposed OARs. However, the SPC believes elements of the proposed rules are at odds with existing statutes and needlessly compromise core principles of academic freedom. If adopted, the rules will impermissibly exceed the Commission's authority.

The Statewide Provosts Council is seeking adjustments to the draft rules that bring them into compliance with the Transfer Statutes and appropriately balance institutional specialization that Oregonians have invested in over many years, and for good reasons, all with the goal of establishing

uniform degree paths so that transfer is legible for students and simpler to administer for community colleges. The OARs that are eventually adopted should recognize the following:

- The HECC is charged to make determinations on the majors to be designated as an MTM in consultation with the Transfer Council and institutions.
- The institutions, through the Transfer Council, are charged to develop, modify, finalize, approve and implement the MTMs. The HECC is charged to coordinate this process and adopt the MTMs.
- Each institution has an obligation to determine whether to participate in an MTM, with the recognition that this right does not affect each institution's obligations to comply with the Transfer Statutes.
- Exemptions from an MTM are allowable when, as determined by the institution seeking an exemption:
 - Participation would cause a significant financial hardship or other strain on the institution's resources, most commonly because it lacks the personnel with the requisite expertise to deliver the full scope of instruction specified in the MTM, and such financial hardship cannot be reasonably mitigated by meaningful variance.
 - The faculty of the institution, through established curriculum approval processes under norms of academic shared governance, has declined to endorse the substantive focus and curricular path established in the MTM, and the concerns that motivated the faculty's decision to not endorse cannot be reasonably addressed by meaningful variance in the MTM.
- Variances in an MTM are allowable to accommodate degree specialization of value to Oregon students or because of institutional resource limitations. Final determinations on variance within an MTM should be decided by the institutions participating in the particular MTM.
- When progress is not being achieved in a timely way, existing higher education leadership organizations that already are a step in program approval—namely the Statewide Provosts Council and the chief academic officers of the community colleges—should be tasked with developing the MTM.
- The MTM agreement should be named Major Transfer Map Statewide Agreement to be consistent with the legislative language, honor academic authority over curricula and communicate a shared leadership model of supporting students and institutions.

Notes

- i ORS 352.146, which establishes that an institution's course of study and curriculum is under the control of the faculty, subject only to the university governing board and to ORS 352.089. Though ORS 352.089 does provide some curricular oversight to the HECC, it does so only for a very specific issue: "a significant change in the university's academic program." It does not give HECC broad and general authority to be involved in curricular decisions that fall short of a significant change that a university is seeking to make in the university's academic program.
- ii The institutions, through the Transfer Council, are required to "develop a unified statewide transfer agreement, based on the foundational curricula established under ORS 350.400 [also the responsibility of the institutions] for each major course of study" ORS 350.404(1).
- iii The Transfer Council is directed to "Serve as the primary venue for community colleges and public universities to collaborate to develop...unified statewide transfer agreements described in ORS 350.404" ORS 350.429(1)(b).
- iv HECC is directed to "regularly use the Transfer Council established in ORS 350.426 to work with representatives from community colleges and public universities listed in ORS 352.022 in order to:...Facilitate the development, and ensure the continued alignment, of the unified statewide transfer agreements described in ORS 350.404" (ORS 350.412(1)(b)).
- v The HECC assuming this role would violate ORS 350.075(8).
- vi The HECC assuming this role would violate ORS 350.075(8).
- vii Pursuant to ORS 352.146.
- viii As set forth in ORS 350.404(2)(d).